IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE THE CHIEF JUSTICE MR.H.L.DATTU
&
THE HONOURABLE MR. JUSTICE K.M.JOSEPH

SATURDAY, THE 1ST DECEMBER 2007 / 10TH AGRAHAYANA 1929

WA.No. 1551 of 1998(A)

AGAINST THE JUDGEMENT IN OP.13948/1996 Dated 28/02/1997
.....

APPELLANT/PETITIONER:

C .ABDUL LATHEEF,
S/O.HAMEED HAJI,
'SUHAGH',
THAILANNUR ROAD,
THAZHA CHOVVA,
KANNUR-670 006.

BY ADV. SRI.K.M.SATHYANATHA MENON

RESPONDENTS/RESPONDENTS:
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1. THE STATE OF KERALA,
REPRESENTED BY THE CHIEF SECRETARY,
GOVERNMENT SECRETARIAT,
TRIVANDRUM.

2. THE REGIONAL TRANSPORT OFFICER,
(REGISTERING AUTHORITY)
KANNUR.

3. THE DEPUTY COMMISSIONER OF
AGRICULTURAL INCOME TAX AND SALES TAX
KANNUR.

BY SR.GOVERNMENT PLEADER MR.MUHAMMED RAFIQ

THIS WRIT APPEAL HAVING BEEN FINALLY HEARD ALONG WITH W.A.NO.1525 OF 1997 & CONNECTED CASES ON 01/12/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

H.L.DATTU, C.J. & K.M.JOSEPH, J.

W.A.Nos.1525 of 1997, 1551 of 1998,
1221, 1261, 1287, 1385 & 1658 of 2004 &
W.P.(C) Nos.17923, 24041 & 31561 of 2004

Dated, this the 1st day of December, 2007

JUDGMENT

H.L.Dattu, C.J.

In all these writ appeals and writ petitions the appellants/petitioners are calling in question certain actions of the respondent authorities, inter alia, demanding payment of entry tax under the provisions of the Kerala Tax on Entry of Goods into Local Areas Act, 1994 ('the Act' for short). All these demands were made pursuant to the charging provision under the said Act. The said charging provision is held to be unconstitutional by a Division Bench of this Court in the case of *Thressiamma L.Chirayil* v. *State of Kerala* (2007 (1) KLT 303). In the said decision the Division Bench of this Court has observed as under:

> "A compensatory tax is levied on an individual as a member of a class and a fee is levied on an individual as such. The concept of compensatory tax is a judicially evolved principle and could be an exception to the provisions of Art.301. In the case of a tax there is no identification of a specific benefit and even if such identification is there it is not capable of direct measurement. A tax is a payment where the special benefit, if any, is converted into common burden. On the other hand, a fee is based on the "principle of equivalence". In the case of a fee or compensatory tax, the "principle of equivalence" applies and the basis of a fee or a compensatory tax is the same. The main basis a fee or a tax, even if there is any benefit, the same is incidental to the government action and even if such benefit results from the government action, the same is not measurable. Fee or a

> compensatory tax has to be broadly proportional and not progressive. Levy of entry tax on goods imported from other State to the State of Kerala and from abroad is not compensatory in nature since the State Government could not discharge its burden by placing materials before Court that payment of levy of entry tax is reimbursement/ recompense for the quantifiable/measurable benefit provided or to be provided. Demand and collection of entry tax under the Kerala Tax on Entry of Goods into Local Areas Act, 1994 is illegal, unauthorized and violative of Art.301 of the Constitution of India."

2. Since the charging provision itself has been struck down by this Court, the question of demanding for payment of entry tax under the Act would not arise. Accordingly, we dispose of all these writ appeals and writ petitions.

3. Consequently, all pending interlocutory applications also stand closed.

Ordered accordingly.

(**H.L.DATTU)**
CHIEF JUSTICE

(K.M.JOSEPH)
JUDGE

vns